



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO GOOCHLAND COUNTY FOR**

### **Goochland County Department of Public Utilities Unpermitted Discharge**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Goochland County for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Collection system" or "sewage collection system" means the Eastern Goochland Wastewater System owned by Goochland County and consisting of pipelines or conduits, pumping stations and force mains, and all other devices and appliances appurtenant thereto, used for the collection and conveyance of waste streams in the system's service area.

4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "Goochland County" identifies a local government entity and political subdivision of the Commonwealth of Virginia. Goochland County is a "person" within the meaning of Va. Code § 62.1-44.3.
9. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
12. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause



pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

13. “PRO” means the DEQ Piedmont Regional Office, located in Glen Allen, Virginia.
14. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-110-10 *et seq.*
15. “SSO” or “sanitary sewer overflow” means the discharge of wastewater (including infiltration and inflow) from a sewage collection system.
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Goochland County owns and operates the Collection System that includes a 48” force main located at 12320 Patterson Avenue, Goochland County, Virginia, known as the Eastern Goochland Force Main. The collection System is part of the public sewer infrastructure managing domestic and industrial sewage in the eastern portion of Goochland County.
2. State Waters Affected include Tuckahoe Creek – James River Basin (Middle James River Sub-basin). During the 2020 305(b)/303(d) Integrated Water Quality Assessment, lower Tuckahoe Creek was assessed as a Category 4A water, meaning it is impaired or threatened for one or more designated uses but does not require a Total Maximum Daily Load (“TMDL”) because the TMDL for specific pollutant(s) is complete and approved by the U.S. Environmental Protection Agency (“EPA”). The recreation use is impaired due to E. coli exceedances. The aquatic life, fish consumption, wildlife, and public water supply uses are all assessed as fully supporting. The Bacteria TMDL for Tuckahoe Creek, Little Tuckahoe Creek, Anderson Branch, Broad Branch, Georges Branch, Readers Branch, and Deep Run Henrico, Goochland, and Hanover Counties was approved by EPA on September 20, 2004 and the Virginia State Water Control Board (“SWCB”) on July 31, 2008. The report allocates E. coli between non-point source and urban runoff. The TMDL calls for a 99% reduction in human fecal coliform bacteria sources. The Chesapeake Bay TMDL was approved by the EPA on December 29, 2010. The

TMDL allocates loads for total nitrogen, total phosphorus, and total suspended solids to protect the dissolved oxygen and submerged aquatic vegetation criteria in the Chesapeake Bay and its tidal tributaries. In the Virginia Water Quality Standards, lower Tuckahoe Creek is a Class VII swamp water. Tuckahoe Creek is a Tier 2 water. As a public water supply, Special Standard “o” applies to the watershed, requiring that the concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin be limited to those amounts from sewage, industrial wastes, and other wastes that are now present in the stream from natural sources and existing discharges in the watershed.

3. On July 27, 2021, Goochland County representatives notified DEQ staff of an SSO at the Collection System. The discharge began on July 27, 2021 at approximately 7:30p as a result of a force main rupture. Goochland County staff immediately responded and succeeded in halting the discharge by approximately 11:00p (3 ½ hours). This was accomplished by closing the Eastern Goochland Pump Station immediately upstream from the discharge, thereby temporarily diverting wastewater to Henrico County’s collection system. An estimated volume of 200,000 – 300,000 gallons discharged to Tuckahoe Creek.
4. In cooperation with DEQ and VDH staff, Goochland County initiated remediation efforts on July 28, 2021, including force main repair, recovery of approximately 80,000 gal. of discharged wastewater, and lime application to impacted drainage ditches running parallel to River Road and the confluence with Tuckahoe Creek. The repaired force main was pressure tested on August 2, 2021 and the Eastern Goochland Pump Station was returned to service on August 3, 2021. An assessment of the area at the confluence of Tuckahoe Creek and the Patterson Avenue drainage ditch indicated no remarkable evidence of impact and no further action was required.
5. The rupture of the Eastern Goochland Force Main could not have been anticipated by Goochland County. The force main has only been in service for approximately 20 years. Although repairs and pressure-reducing operational adjustments have been completed, Goochland County plans to replace the force main for purposes of meeting long-term utility needs in the service area.
6. DEQ subsequently issued an NOV on August 16, 2021 (NOV No. W2021-09-PRO-203) for the discharge. The NOV makes the following observations.
7. On July 27, 2021, Goochland County representatives notified DEQ of an SSO at 12320 Patterson Avenue, Goochland County, Virginia. The discharge began on July 27, 2021, and lasted for 3 ½ hours. An estimated volume of 200,000 - 300,000 gallons discharged to Tuckahoe Creek from the Goochland County Public Utilities Patterson Avenue Force Main Break.

Va. Code § 62.1-44.5(A) states, “Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances .



. . Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses . . .”

9 VAC 25-31-50(A) states “[e]xcept in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.”

8. Goochland County forwarded a comprehensive written response to the NOV on September 24, 2021. DEQ staff subsequently met with Goochland County staff on November 9, 2021 and January 24, 2022 to discuss the NOV, long term corrective action to refurbish the force main, and the enforcement process. Goochland County demonstrated significant effort to mitigate and immediately halt the discharge. Goochland County also maintained a notable posture of cooperation and communication with DEQ staff during discharge response.
9. The Department has issued no permits or certificates to Goochland County associated with the discharge.
10. Tuckahoe Creek is a surface water located wholly within the Commonwealth and is a “State water” under State Water Control Law.
11. Based on the results of the June 9, 2021 investigation and other information collected by DEQ, the Board concludes that Goochland County violated Va. Code § 62.1-44.5(A) and 9 VAC 25-31-50(A) by discharging sewage from the Collection System without a Permit, as described in this Section.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Goochland County, and Goochland County agrees to:

1. Pay a civil charge of **\$4,550 within 30 days** of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104

Richmond, Virginia 23218

Goochland County shall include its Federal Employer Identification Number ("FEIN") with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund ("VEERF"). If the Department has to refer collection of moneys due under this Order to the Department of Law, Drucker & Falk shall be liable for attorneys' fees of 30% of the amount outstanding.

2. Perform the actions described in Appendix A.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Goochland County, either for good cause shown by Goochland County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Goochland County admits the jurisdictional allegations, and neither admits nor denies the findings of fact, and conclusions of law contained herein.
4. Goochland County consents to venue as provided in VA Code § 8.01-261.1.b, which establishes the Circuit Court of Goochland County as the Category A preferred venue for any civil action taken to enforce the terms of this Order.
5. Goochland County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Goochland County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.



7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Goochland County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Goochland County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Goochland County shall notify the DEQ Regional Director verbally within 72 hours and in writing within five business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 72 hours and in writing within five business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Goochland County. Nevertheless, Goochland County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Goochland County has completed all of the requirements of the Order;
  - b. Goochland County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Goochland County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Goochland County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Goochland County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Goochland County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Goochland County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Goochland County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Goochland County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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James J. Golden, Regional Director  
Department of Environmental Quality



Goochland County voluntarily agrees to the issuance of this Order.

Date: 3/30/22 By: [Signature], County Administrator  
Goochland County Title  
Signing Official

Commonwealth of Virginia  
City/County of Goochland

The foregoing document was signed and acknowledged before me this 30<sup>th</sup> day of March, 2022, for Goochland County on behalf of the County.

[Signature]  
Notary Public

317806  
Registration No.

My commission expires: 9/30/22

Notary seal:



APPENDIX A:

## **CORRECTIVE ACTION PLAN FOR FORCE MAIN REPAIR AND REPLACEMENT**

Goochland County shall:

1. Within 90 days of the effective date of this order, submit to the Department for review and approval, a Corrective Action Plan ("CAP") with an implementation and completion schedule for repair and replacement of the Eastern Goochland Force Main. The CAP shall include, at a minimum, a description of the refurbishment of the Eastern Goochland Force Main and a firm schedule of project completion. Upon completion of Department review of the CAP, Goochland County shall respond to any Department questions or concerns within ten days of receipt. Upon DEQ final approval, the CAP shall be incorporated by reference as an enforceable part of this order.
2. Beginning January 1, 2023, Goochland County shall submit progress reports describing work progress on a semi-annual basis, due on or before January 1 and July 1 of each year until work completion.
3. Goochland County shall notify the Department within 30 days of completion of the project. Upon completion of the project, Goochland County shall schedule a meeting with the Department to review work completion and performance.
4. Goochland County shall provide a written justification in the event of any proposed revisions to the CAP. Such revisions shall only become effective if approved by the Department.
5. Documents to be submitted to the Department shall be sent to:

**Enforcement Office  
VA DEQ –Piedmont Regional Office  
4949A Cox Road,  
Glen Allen, Virginia 23060  
Jefferson.Reynolds@deq.virginia.gov**